Filed 5/31/07 In re D.J. CA2/1

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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| In re D.J.,<br><br>a Person Coming Under the Juvenile Court Law. | B192294<br><br>(Los Angeles County Super. Ct. No. NJ19571) |
| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>D.J.,<br><br>Defendant and Appellant. | |

APPEAL from an order the Superior Court of Los Angeles County, Robert Ambrose, Juvenile Court Referee. Affirmed.

Ann Krausz, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Scott A. Taryle, Supervising Deputy Attorney General, and David Wildman, Deputy Attorney General, for Plaintiff and Respondent.

## INTRODUCTION

Appellant D.J., a minor, appeals from an order of the juvenile court declaring him to be a ward of the court (Welf. & Inst. Code, § 602) and ordering camp placement after finding that appellant was guilty of the sale or transportation of marijuana (Health & Saf. Code, § 11360, subd. (a)). On appeal, appellant contends that there was insufficient evidence to support the finding that he was guilty of sale or transportation of marijuana without the testimony of a chemist. We disagree and affirm the order.

## FACTS

During the afternoon on May 27, 2006, Los Angeles Police Officers John Boverie and Gilberto Rendon separately responded to a call of a shooting. The suspects were two teenage males. Officer Boverie saw a 2002 Range Rover matching a vehicle reportedly involved in the shooting. Appellant was driving, and another teenage male was in the passenger seat. After a short chase, the Range Rover crashed into a pole. Appellant exited the vehicle and started running.

Officer Rendon ultimately detained appellant. A pat-down search of his left sock revealed eight clear plastic bags containing green leafy substances resembling marijuana. Appellant's right front pants pocket contained $413, and he had 18 clear plastic bags in his right front coin pocket.

Based on Officer Boverie's training and experience, he opined that the green leafy substance was marijuana. Officer Boverie also opined that the marijuana was possessed for the purpose of sales. The substance was never tested.

## DISCUSSION

In reviewing a sufficiency of evidence claim, the reviewing court's role is a limited one. The test to determine sufficiency of evidence is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. On appeal, the reviewing court must view the evidence in the light most favorable to the prevailing party and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. (*People v. Smith* (2005) 37 Cal.4th 733, 738-939.)

Appellant urges that there was insufficient evidence presented because there was no evidence presented that the substance found on appellant was tested and found to contain marijuana. While it is true that the narcotic character of a substance is normally proven after a chemical analysis, the lack of an analysis is not fatal. The corpus delicti may be established by circumstantial evidence or by inference. (*People v. Sonleitner* (1986) 183 Cal.App.3d 364, 369; *People v. Galfund* (1968) 267 Cal.App.2d 317, 320.)

In *People v. Sonleitner, supra*, 183 Cal.App.3d 364, the substance was not available for chemical analysis because the defendant had flushed it down the toilet as the police arrived at the residence. A police officer testified that he "had seen cocaine thousands of times in his 10 years' experience as a narcotics officer, and he testified that he could observe the white crystalline character of the substance, resembling cocaine, as [the defendant] was pouring it from the bottle." (*Id*. at p. 370.) The court held that this testimony, in conjunction with other circumstantial evidence, was sufficient to establish that the substance was cocaine. (*Id*. at pp. 369, 370.)

Similarly, in *People v. Galfund, supra*, 267 Cal.App.2d 317, the defendant contended proof of possession of a controlled substance required a chemical analysis, and the observations of narcotics officers would not suffice. (*Id*. at p. 320.) The officer testifying as to the nature of the substance was an expert on narcotics and narcotics paraphernalia. He had heard conversations taking place involving drug usage and had seen the codefendant prepare and inject the contents of a toy balloon into his vein. (*Id*. at

p. 321.) The *Galfund* court distinguished *People v. McChristian* (1966) 245 Cal.App.2d 891, stating that *McChristian* "does not hold, as urged by appellant, that proof of heroin possession requires chemical analysis and that trained observations of narcotic officers will not suffice. But under the facts of that case it does hold that 'The opinion testimony of the officers, based upon their observation of the outward appearance of the balloons, was speculative and conjectural, and was not competent evidence that the balloons in the possession of defendant contained heroin.'" (*Galfund*, *supra*, at p. 321, italics omitted, quoting from *McChristian*, *supra*, at p. 897.) Under the facts of the case before it, the officer's testimony provided sufficient evidence that the substance was a narcotic. (*Galfund*, *supra*, at p. 321.)

Appellant relies on *People v. Adams* (1990) 220 Cal.App.3d 680 to support his position that Officer Boverie's testimony was insufficient to support the juvenile court's finding. In *Adams*, an officer was found, based on his training and experience, to be "an expert on possession of rock cocaine for sale." (*Id*. at p. 684.) A criminalist testified that the substance in question contained cocaine, but "was not asked and did not indicate whether the cocaine was cocaine base or whether a test to make that determination had been undertaken." (*Ibid*.) The court noted that neither the officer nor any other expert witness testified that physical appearance alone was a sufficient basis for the identification of a substance containing "cocaine base" as opposed to a substance containing "cocaine," as the terms are used in Health and Safety Code sections 11054, subdivision (f)(1), and 11055, subdivision (b)(6). (*Id*. at pp. 687-688.) In the instant case, Officer Boverie was an expert in the identification of marijuana and was able to identify the substance by appearance and smell.

Appellant also relies on *Cook v. United States* (9th Cir. 1966) 362 F.2d 548 to support his position. In *Cook*, *supra*, at page 549, the court reversed drug convictions after finding that the government failed to prove that the alleged cocaine was in fact narcotic drugs. The court stated, "We note judicially that whether or not a powder or substance is a narcotic cannot be determined by a mere inspection of its outward appearance. In this case, for reasons unknown to us, the Government made no attempt to

prove the narcotic character of the drugs and did not succeed in doing so." (*Ibid.*) The court in *Cook* did not hold, however, that expert testimony identifying controlled substances based on physical examination as opposed to chemical analysis is never sufficient to prove the narcotic character of the substance.[1]

In the instant case, Officer Boverie had been to two narcotics schools. He had over a hundred street contacts with marijuana and many opportunities to smell chopped up marijuana. He had never observed marijuana that was not green and had never smelled marijuana that smelled differently. Based on Officer Boverie's training and experience, he opined that the green leafy substances were marijuana. He also opined the marijuana was possessed for the purpose of sales.

In addition, there was strong circumstantial evidence to support the juvenile court's finding. The pat-down of appellant revealed that his left sock contained eight clear plastic bags containing green leafy substances resembling marijuana. Appellant argues that what appears to be a narcotic may be an innocent substance, and most homes contain white powder, crystalline material or leafy green substance in the form of baking soda, rock sugar and oregano, relying on *People v. Taylor* (2001) 93 Cal.App.4th 933, 950. However, it is highly unlikely that appellant was carrying oregano in eight clear plastic bags concealed in his left sock. Appellant also had 18 clear plastic bags and $413 in cash in his pocket. While it is possible that appellant was planning to place oregano in the remaining 18 clear plastic bags and put them in his right sock, it is also highly unlikely.

In summary, substantial evidence was presented to support the juvenile court's finding that appellant possessed marijuana for sale. The prosecution was not required to present evidence of a chemical analysis to sustain the juvenile court's finding.

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[1] In any event, *Cook* is not binding on this court. (See *People v. Burnett* (2003) 110 Cal.App.4th 868, 882 [decisions of the United State Court of Appeals are not precedent in California, and are merely persuasive authority].)

## DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED

JACKSON, J.*

We concur:

MALLANO, Acting P. J.

ROTHSCHILD, J.

* Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.